

Food and Nutrition Service, USDA

§ 210.18

of Revenues (FNS-13) to FNS. This report identifies the State revenues to be counted toward the State revenue matching requirements specified in paragraph (a) of this section.

(h) *Accounting system.* The State agency shall establish or cause to be established a system whereby all expended State revenues counted in meeting the matching requirements prescribed in paragraph (a) of this section are properly documented and accounted for.

§ 210.18 Administrative reviews.

(a) *Implementation dates.* Each State agency must follow the requirements of this section to conduct administrative reviews of school food authorities serving meals under parts 210 and 220 of this chapter. For school food authorities selected for administrative review in school year 2012–2013, State agencies may conduct the administrative reviews in school year 2012–13 or 2013–14; except that, State agencies must conduct reviews of those school food authorities identified as at-risk school food authorities in school year 2012–2013.

(b) *Definitions.* The following definitions are provided in order to clarify State agency administrative review requirements:

(1) *Administrative reviews* means the initial comprehensive on-site evaluation of all school food authorities participating in the Program in accordance with the provisions of this section. The term “administrative review” is used to reflect a review of both critical and general areas in accordance with paragraphs (g) and (h) of this section, and includes other areas of Program operations determined by the State agency to be important to Program performance.

(2) *Critical areas* means the following two performance standards described in detail in paragraph (g) of this section which serve as measures of compliance with Program regulations:

(i) *Performance Standard 1—Certification/Counting/Claiming*—All free, reduced price and paid lunches claimed for reimbursement are served only to children eligible for free, reduced price and paid lunches, respectively; and counted, recorded, consolidated and re-

ported through a system which consistently yields correct claims.

(ii) *Performance Standard 2—Meal Requirements.* Reimbursable lunches meet the meal requirements in § 210.10 of this chapter, as applicable to the age/grade group reviewed. Reimbursable breakfasts meet the meal requirements in §§ 220.8 and 220.23 of this chapter, as applicable to the age/grade group reviewed.

(3) *Documented corrective action* means written notification required of the school food authority to certify that the corrective action required for each violation has been completed and to notify the State agency of the dates of completion. Documented corrective action may be provided at the time of the review or may be submitted to the State agency within specified timeframes.

(4) *Follow-up reviews* means any visit(s) to the school food authority subsequent to the administrative review to ensure corrective actions are taken.

(5) *General areas* means the areas of review specified in paragraph (h) of this section.

(6) *Large school food authority* means, in any State:

(i) All school food authorities that participate in the Program and have enrollments of 40,000 children or more each; or

(ii) If there are less than two school food authorities with enrollments of 40,000 or more, the two largest school food authorities that participate in the Program and have enrollments of 2,000 children or more each.

(7) *Participation factor* means the percentages of children approved by the school for free lunches, reduced price lunches, and paid lunches, respectively, who are participating in the Program. The free participation factor is derived by dividing the number of free lunches claimed for any given period by the product of the number of children approved for free lunches for the same period times the operating days in that period. A similar computation is used to determine the reduced price and paid participation factors. The number of children approved for paid lunches is derived by subtracting the number of children approved for free and reduced

price lunches for any given period from the total number of children enrolled in the reviewed school for the same period of time, if available. If such enrollment figures are not available, the most recent total number of children enrolled shall be used. If school food authority participation factors are unavailable or unreliable, State-wide data shall be employed.

(8) *Review period* means the period of time covered by the administrative review or follow-up review. The review period is specified in paragraph (f)(2) of this section.

(9) *Review threshold* means the degree of error in a critical area of review which, if exceeded during an administrative review or follow-up review of a school food authority, may trigger a follow-up review of that school food authority.

(10) *Small school food authority* means, in any State, a school food authority that participates in the Program and is not a large school food authority, as defined in this section.

(c) *Timing of reviews.* State agencies must conduct administrative reviews of all school food authorities participating in the National School Lunch Program and/or School Breakfast Program at least once during a 3-year review cycle. For each State agency, the first 3-year review cycle will start the school year that begins on July 1, 2013 and ends on June 30, 2014. Administrative reviews and follow-up reviews must be conducted as follows:

(1) *Administrative reviews.* At a minimum, State agencies must conduct administrative reviews of all school food authorities at least once during each 3-year review cycle, provided that each school food authority is reviewed at least once every 4 years. The on-site portion of the administrative review must be completed during the school year in which the review was begun.

(2) *Exceptions.* FNS may, on an individual school food authority basis, approve written requests for 1-year extensions to the 3-year review cycle specified in paragraph (c)(1) of this section if FNS determines this 3-year cycle requirement conflicts with efficient State agency management of the Programs.

(3) *Follow-up reviews.* The State agency is encouraged to conduct first follow-up reviews in the same school year as the administrative review. The first follow-up review must be conducted no later than December 31 of the school year following the administrative review. Subsequent follow-up reviews must be scheduled in accordance with paragraph (i)(5) of this section.

(d) *Scheduling school food authorities.* The State agency shall use its own criteria to schedule school food authorities for administrative reviews; provided that the requirements of paragraph (c) of this section are met. State agencies are encouraged to take into consideration the findings of the claims review process required under §210.8(b)(2) of this part in the selection of school food authorities.

(1) *Schedule of reviews.* To ensure no unintended overlap occurs, the State agency shall inform FNS of the anticipated schedule of school food authority reviews upon request.

(2) *Reporting follow-up review activity.* At such time as the State agency determines that a follow-up review is needed, the State agency shall notify FNS of the names of those large school food authorities exceeding any one of the critical area review thresholds specified in paragraph (i) of this section.

(3) *Exceptions.* (i) In any school year in which FNS or OIG conducts a review or investigation of a school food authority in accordance with §210.19(a)(5) of this part, the State agency shall, unless otherwise authorized by FNS, delay conduct of a scheduled administrative review until the following school year. The State agency shall document any exception authorized under this paragraph.

(ii) Any school food authority that was not reviewed in the review cycle for school year 2007–2008 through school year 2012–2013, shall be reviewed in the first year of the 3-year review cycle set forth in paragraph (c) of this section (school year 2013–2014).

(e) *Number of schools to review.* The State agency is encouraged to review all schools meeting the school selection criteria specified in paragraph (e)(2) of this section. At a minimum,

Food and Nutrition Service, USDA

§210.18

the State agency shall review the number of schools specified in paragraph (e)(2) of this section and shall select the schools to be reviewed on the basis of the school selection criteria specified in paragraph (e)(2) of this section.

(1) *Minimum number of schools.* Except for residential child care institutions, the State agency shall review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event shall the State agency review less than the minimum number of schools illustrated in table A:

TABLE A

No. of schools in the school food authority	Minimum no. of schools to be reviewed
1 to 5	1
6 to 10	2
11 to 20	3
21 to 40	4
41 to 60	6
61 to 80	8
81 to 100	10
101 or more	¹ 12

¹Twelve plus 5 percent of the number of schools over 100. Fractions shall be rounded to the nearest whole number.

(2) *School selection criteria.* (i) Selection of additional schools to meet the minimum number of schools required under paragraph (e)(2) of this section, shall be based on the following criteria:

(A) Elementary schools with a free average daily participation of 100 or more and a free participation factor of 97 percent or more;

(B) Secondary schools with a free average daily participation of 100 or more and a free participation factor of 77 percent or more; and

(C) Combination schools with a free average daily participation of 100 or more and a free participation factor of 87 percent or more. A combination school means a school with a mixture of elementary and secondary grades.

(ii) When the number of schools selected on the basis of the criteria established in paragraph (A) through paragraph (C) of this paragraph are not sufficient to meet the minimum number of schools required under paragraph (e)(1) of this section, the schools selected for review shall be selected on the basis of State agency criteria which may include low participation schools, recommendations from a food

service director based on findings from the on-site visits or the claims review process required under §210.8(a) of this part; or any school in which the daily lunch counts appear questionable, e.g., identical or very similar claiming patterns, and/or large changes in free lunch counts.

(3) *Pervasive problems.* If the State agency review finds pervasive problems in a school food authority, FNS may authorize the State agency to cease review activities prior to reviewing the required number of schools under paragraph (e)(1) of this section. Where FNS authorizes the State agency to cease review activity, FNS may either conduct the review activity itself or refer the school food authority to OIG.

(4) *Noncompliance with meal pattern requirements.* If the State agency determines there is significant noncompliance with the meal pattern and nutrition requirements as set forth in §§210.10 and 220.8 and 220.23, as applicable, the State agency must select the school food authority for administrative review earlier in the review cycle.

(f) *Scope of review.* During the course of an administrative review, each State agency shall monitor compliance with the critical and general areas identified in paragraphs (g) and (h) of this section.

(1) *Review form.* State agencies shall use the administrative review form prescribed by FNS for the critical areas of review specified in paragraph (g) of this section. State agencies may use their own administrative review form for the general areas of review specified in paragraph (h) of this section.

(2) *Review period.* (i) The review period for administrative reviews and follow-up reviews shall cover, at a minimum, the most recent month for which a Claim for Reimbursement was submitted; provided that such Claim for Reimbursement covers at least 10 operating days.

(ii) Subject to FNS approval, the State agency may conduct a review early in the school year, prior to the submission of a Claim for Reimbursement. In such cases, the review period shall be the prior month of operation in the current school year, provided that such month includes at least 10 operating days.

(3) *Audit findings.* To prevent duplication of effort, the State agency may use any recent and currently applicable findings from Federally-required audit activity or from any State-imposed audit requirements. Such findings may be used only insofar as they pertain to the reviewed school(s) or the overall operation of the school food authority and they are relevant to the review period. The State agency shall document the source and the date of the audit.

(g) *Critical areas of review.* The performance standards listed in this paragraph are deemed critical since compliance in these areas is directly linked to the service of a reimbursable lunch.

(1) *Performance Standard 1 (All free, reduced price and paid lunches claimed for reimbursement are served only to children eligible for free, reduced price and paid lunches, respectively; and are counted, recorded, consolidated and reported through a system which consistently yields correct claims.)* The State agency shall determine that the free and reduced price eligibility determinations are correct. In addition, the State agency shall determine that for each day of operation for the review period, the number of free, reduced price and paid lunches claimed for each reviewed school is not more than the number of lunches served to children eligible for free, reduced price and paid lunches, respectively, in those schools for the review period. The State agency shall also determine that a lunch counting system is being used which accurately counts, records, consolidates and reports the reimbursable lunches served, by type.

(i) For each school reviewed, the State agency shall:

(A) Determine the number of children eligible for free, reduced price and paid lunches, by type, for the review period. To make this determination:

(1) The State agency shall:

(i) Review all approved free and reduced price applications for children in the reviewed schools back to the beginning of the school year to determine whether each child's application is complete and correctly approved in accordance with all applicable provisions of 7 CFR part 245; or

(ii) Review all approved free and reduced price applications effective for

the review period for children in the reviewed schools; or

(iii) Review all approved free and reduced price applications effective on the day(s) the review is conducted for children in the reviewed schools.

(2) In lieu of reviewing all of the free and reduced price applications as required under paragraph (g)(1)(i)(A)(I) of this section, the State agency may review a statistically valid sample of those applications. If the State agency chooses to review a statistically valid sample of applications, the State agency shall ensure that the sample size is large enough so that there is a 95 percent chance that the actual error rate for all applications is not less than 2 percentage points less than the error rate found in the sample (i.e., the lower bound of the one-sided 95 percent confidence interval is no more than 2 percentage points less than the point estimate). In addition, the State agency shall determine the need for follow-up reviews and base fiscal action upon the error rate found in the sample.

(3) Evaluate if the previous year's eligibility determinations were used as required in §245.6(c)(2) of this chapter.

(4) In the case where children are determined eligible for free lunches through direct certification, as specified in §245.6 of this chapter, establish that the documentation for direct certification of children is official and from the appropriate State or local agency or another appropriate individual, as approved by FNS; establish that all information required under §245.6 of this chapter is complete and the children were enrolled in the school under review during the review period.

(B) Evaluate the system for issuing benefits and updating eligibility status by validating the mechanism(s) the reviewed school uses to provide benefits to eligible children, e.g., master list. The State agency shall determine whether the system for issuing benefits and updating children's eligibility status is adequate and, within the timeframes established in §210.7(c)(1)(ii)(B), reflects changes due to verification findings, transfers, or a household's decision to decline benefits.

(C) Determine whether the lunch counting system yields correct claims.

Food and Nutrition Service, USDA

§210.18

At a minimum, the State agency shall determine whether:

(1) The daily lunch counts, by type, for the review period are more than the product of the number of children determined by the school/school food authority to be eligible for free, reduced price, and paid lunches for the review period times an attendance factor. If the lunch count, for any type, appears questionable or significantly exceeds the product of the number of eligibles, for that type, times an attendance factor, documentation showing good cause must be available for review by the State agency.

(2) Each type of food service line provides accurate point of service lunch counts, by type, and those lunch counts are correctly counted and recorded. If an alternative counting system is employed (in accordance with §210.7(c)(2)), the State agency shall ensure that it provides accurate counts of reimbursable lunches, by type, and is correctly implemented as approved by the State agency.

(3) All lunches are correctly counted, recorded, consolidated and reported for the day they are served.

(ii) For each school food authority reviewed, the State agency shall review lunch count records to ensure that the lunch counts submitted by each reviewed school are correctly consolidated, recorded, and reported by the school food authority on the Claim for Reimbursement.

(2) *Performance Standard 2 (Reimbursable lunches meet the meal requirements in §210.10 of this chapter, as applicable to the age/grade group reviewed.* Reimbursable breakfasts meet the meal requirements in §§220.8 and 220.23 of this chapter, as applicable to the age/grade group reviewed. When reviewing meals, the State agency must:

(i) For the day of the review, observe the serving line(s) to determine whether all food components and food quantities required under §210.10, as applicable, and §§220.8 and 220.23, as applicable, are offered.

(ii) For the day of the review, observe a significant number of the Program meals counted at the point of service for each type of serving line to determine whether the meals selected by the students contain the food components

and food quantities required for a reimbursable meal under §210.10, as applicable, and §§220.8 and 220.23, as applicable. If visual observation suggests that quantities offered are insufficient or excessive, the State agency must require the reviewed school(s) to provide documentation demonstrating that the required amounts of each food component were available for service for each day of the review period.

(iii) Review menu and production records for a minimum of five operating days (specified by the State agency); such review must determine whether all food components and food quantities required under §210.10, as applicable, and §§220.8 and 220.23, as applicable, of this chapter have been offered.

(iv) Conduct a weighted nutrient analysis of the meals for students in age/grade groups K and above to determine whether the meals offered meet the calorie, sodium, and saturated fat requirements in §210.10 and §§220.8 and 220.23 of this chapter, as applicable. The State agency must conduct the nutrient analysis in accordance with the procedures established in §210.10(i) of this part. Until instructed by the Secretary, a nutrient analysis for the meals offered to preschoolers is not required. The State agency must also review nutrition labeling or manufacturer specifications for products or ingredients used to prepare school meals to verify they contain zero grams (less than 0.5 grams) of *trans* fat per serving.

(v) If the school food authority is receiving performance-based cash assistance under §210.7(d), assess the school food authority's meal service and documentation of lunches served and determine whether performance-based cash assistance should continue to be provided.

(h) *General areas of review.* The general areas listed in this paragraph reflect major Program requirements. The general areas of review shall include, but are not limited to, the following areas:

(1) *Free and reduced price process.* In the course of the review of each school food authority, the State agency shall:

(i) Review the implementation of the free and reduced price policy statement

§210.18

7 CFR Ch. II (1–14 Edition)

to ensure it is implemented as approved.

(ii) Evaluate whether the required minimum number of applications are verified with respect to the selection method used.

(iii) Determine that applications for verification are selected in accordance with the applicable procedures in §245.6a(c) of this chapter and that no discrimination exists in the selection process.

(iv) Establish that verification is completed by November 15 (or other date established in accordance with §245.6a(b)(2)(i) or (b)(2)(ii) of this chapter) including any follow-up activities as required in §245.6a(f)(6) of this chapter. If the administrative review occurs prior to the November 15 deadline, the State agency shall evaluate the verification activities that have occurred to date and assess whether these activities represent a good faith effort that will result in compliance with the requirements of §245.6a of this title.

(v) Confirm that the verification process is complete for each application verified by or on behalf of the reviewed schools. Verification is considered complete either when a child's eligibility for the level of benefits for which he or she was approved is confirmed, changed to a higher level of benefit, or a letter of adverse action has been sent.

(vi) Ensure that verification records are maintained as required by §245.6a(i) of this chapter.

(vii) Determine that, for each reviewed school, the lunch count system does not overtly identify children eligible for free and reduced price lunches.

(viii) Review a representative sample of denied applications to evaluate whether the determining official correctly denied applicants for free and reduced price lunches.

(2) *Civil rights.* The State agency shall examine the school food authority's compliance with the civil rights provisions specified in §210.23(b) of this part.

(3) *Monitoring responsibilities.* The State agency shall ensure that the school food authority conducts on-site reviews in accordance with §210.8(a)(1) of this part and monitors claims in accordance with §210.8(a)(2) and (a)(3) of this part.

(4) *Reporting and recordkeeping.* The State agency shall determine that the school food authority submits reports and maintains records as required under 7 CFR parts 210 and 245.

(5) *Food safety.* The State Agency must examine records to confirm that each school food authority under its jurisdiction meets the food safety requirements of §210.13.

(6) *Competitive food standards.* The State agency must ensure that the local educational agency and school food authority comply with the nutrition standards for competitive food and retain documentation demonstrating compliance with the competitive food service and standards.

(i) *Follow-up reviews.* All school food authorities found to have a critical area violation in excess of any one of the review thresholds specified in this paragraph are subject to follow-up reviews. State agencies shall notify FNS of the names of large school food authorities exceeding critical area review thresholds in accordance with paragraph (d)(2) of this section. The State agency shall conduct a first follow-up review of any large school food authority found on an administrative review to have critical area violations in excess of any one of the review thresholds. State agencies shall also conduct a first follow-up review of at least 25 percent of the small school food authorities found on a review to have critical area violations in excess of any one of the review thresholds. State agencies shall conduct additional follow-up reviews of any school food authority which has a critical area violation exceeding a review threshold on the first follow-up or any subsequent follow-up review regardless of whether such review is conducted by FNS or the State agency.

(1) *Selection of small school food authorities.* In determining which small school food authorities to include in the follow-up review sample, State agencies shall select those school food authorities which have the most serious problems, including, but not limited to, systemic accountability problems, large overclaims, significant lunch pattern violations, etc.

(2) *Selection of schools.* (i) If the critical area violation(s) responsible for

Food and Nutrition Service, USDA

§ 210.18

follow-up review activity are limited to school food authority level problems (e.g. centralized application processing or centralized kitchen), the State agency may limit the follow-up review to the school food authority level.

(ii) If the critical area violation(s) responsible for follow-up review activity were identified in the review of a school(s), then State agencies shall review at least the minimum number of schools required under paragraph (e)(1) of this section. State agencies shall meet the minimum number of schools requirement by selecting those schools found, on a previous review, to have significant critical area violations. If any additional schools must be selected to meet the minimum required number, the State agency shall select from those schools which meet State agency-developed criteria identified under paragraph (e)(2)(ii) of this section.

(3) *Review thresholds.* The review thresholds apply only to the critical areas of review and are designed to limit follow-up reviews to those school food authorities with serious problems. The provisions of paragraph (i) of this section apply when:

(i) For Performance Standard 1—

(A) A number of the reviewed schools in a school food authority, as specified in Table B, have an inadequate system for certification, issuing benefits or updating eligibility status; or for counting, recording, consolidating or reporting lunches, by type; or

(B) The school food authority has an inadequate system for consolidating lunch counts, by type, or for reporting claims; or, if applicable, for certification, issuing benefits or updating eligibility status.

(C) At the school and school food authority level, a system for certification, issuing benefits or updating eligibility status is inadequate if 10 percent or more (but not less than 100 lunches) of the free and reduced price lunches claimed for the review period (for any school reviewed) are claimed incorrectly due to errors of certification, benefit issuance or updating of eligibility status.

TABLE B

Number of schools reviewed	Number of schools violating performance standard 1
1 to 5	1
6 to 10	2
11 to 20	3
21 to 30	4
31 to 40	5
41 to 50	6
51 to 60	7
61 to 70	8
71 to 80	9
81 to 90	10
91 to 100	11
101 or more	11*

*11 plus the number identified above for the appropriate increment.

(ii) For Performance Standard 2—10 percent or more of the total number of Program lunches or Program breakfasts observed in a school food authority are missing one or more of the food components required under parts 210 and 220.

(4) *Scope of follow-up reviews.* On any follow-up review, the State agency is encouraged to review all of the critical and general areas of review specified in paragraph (g) and (h) of this section for those schools which were not reviewed during the administrative review. At a minimum, the State agency shall:

(i) For each school selected for review (or for the school food authority, as applicable,) review the critical areas for which the review thresholds were exceeded by the school food authority on a previous review;

(ii) Determine whether the school food authority has satisfactorily completed the corrective actions in accordance with paragraph (k) of this section required for both critical and general areas within the timeframes established by the State agency;

(iii) Evaluate whether these corrective actions resolved the problem(s); and

(iv) If the State agency did not evaluate the certification, count and milk/meal service procedures for the Special Milk Program for Children (7 CFR part 215) or offering meal supplements in after hour care programs (7 CFR part 210) in those schools selected for the administrative review and participating in those Programs, the State agency shall do so for those schools selected for the first follow-up review.

(5) *Critical area violations identified in a follow-up review.* Critical area violations identified on a follow-up review shall be addressed as follows:

(i) If, during a follow-up review, the State agency determines, that corrective actions have not been satisfactorily completed in accordance with the documented corrective action, the State agency shall: require the school food authority to resolve the problems and to submit documented corrective action to the State agency; take fiscal action for critical area violations as specified in paragraph (m) of this section; and withhold Program payments in accordance with paragraph (l) of this section, until such time as a follow-up review, requested by the school food authority, indicates the problem has been corrected. If the State agency determines that the corrective actions have been completed as specified in the documented corrective action, but those corrective actions do not effectively resolve the problem, the State agency shall follow the requirements for new critical area violations specified in paragraphs (i)(5)(ii) and (iii) of this section.

(ii) If new critical area violations are observed that exceed a review threshold, the State agency shall: Require the school food authority to resolve the problems and to submit documented corrective action to the State agency; take fiscal action as specified in paragraph (m) of this section; and conduct a follow-up review within 6 operating months of the first follow-up review.

(iii) If new critical area violations are observed which do not exceed review thresholds, the State agency shall: Require the school food authority to resolve the problem and to submit documented corrective action to the State agency within specified timeframes; and take fiscal action in accordance with paragraph (m) of this section. If adequate documented corrective action is not received within those timeframes, the State agency shall withhold Program payments in accordance with paragraph (l) of this section, until such time as adequate documented corrective action is received.

(6) *General area violations identified in a follow-up review.* General area violations identified in a follow-up review shall be addressed as follows:

(i) If, during a follow-up review, the State agency determines that corrective actions have not been taken in accordance with the documented corrective action, the State agency shall withhold Program payments in accordance with paragraph (l) of this section, until such time as the State agency receives adequate documented corrective action.

(ii) If the State agency determines that the corrective actions taken did not effectively resolve the problem, or if new general area violations are observed on a follow-up review, the State agency shall require the school food authority to resolve the problem and to submit documented corrective action to the State agency within specified timeframes. If adequate documented corrective action is not received within those timeframes, the State agency shall withhold Program payments in accordance with paragraph (l) of this section, until such time as adequate documented corrective action is received.

(7) *Exceptions.* FNS may, on an individual school food authority basis, approve written requests for exceptions to the follow-up review requirement specified in paragraph (i)(1) of this section if FNS determines that the requirement conflicts with efficient State agency management of the program.

(j) *Exit conference and notification.* The State agency shall hold an exit conference at the close of the administrative review and of any subsequent follow-up review to discuss the violations observed, the extent of the violations and a preliminary assessment of the actions needed to correct the violations. The State agency shall discuss an appropriate deadline(s) for completion of corrective action, provided that the deadline(s) results in the completion of corrective action on a timely basis. After every review, the State agency shall provide written notification of the review findings to the school food authority's Superintendent (or equivalent in a non-public school

Food and Nutrition Service, USDA

§210.18

food authority) or authorized representative. The written notification shall include the review findings, the needed corrective actions, the deadlines for completion of the corrective action, and the potential fiscal action. As a part of the denial of all or a part of a Claim for Reimbursement or withholding payment in accordance with the provisions of this section, the State agency shall provide the school food authority a written notice which details the grounds on which the denial of all or a part of the Claim for Reimbursement or withholding payment is based. This notice, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (i.e., FNS or State agency) to which the appeal should be directed. The State agency shall notify the school food authority, in writing, of the appeal procedures as specified in §210.18(q) for appeals of State agency findings, and for appeals of FNS findings, provide a copy of §210.29(d)(3) of the regulations.

(k) *Corrective action.* Corrective action is required for any violation under either the critical or general areas of the review. Corrective action shall be applied to all schools in the school food authority, as appropriate, to ensure that previously deficient practices and procedures are revised system-wide.

Corrective actions may include training, technical assistance, recalculation of data to ensure the correctness of any claim that the school food authority is preparing at the time of the review, or other actions. Fiscal action shall be taken in accordance with paragraph (m) of this section.

(1) *Extensions of the timeframes.* If extraordinary circumstances arise where a school food authority is unable to complete the required corrective action within the timeframes specified by the State agency, the State agency may extend the timeframes upon written request of the school food authority.

(2) *Documented corrective action.* Documented corrective action is required for any degree of violation of general

or critical areas identified in an administrative review or on any follow-up review. Documented corrective action may be provided at the time of the review; however, it shall be postmarked or submitted to the State agency no later than 30 days from the deadline for completion of each required corrective action, as specified under paragraph (j) of this section or as otherwise extended by the State agency under paragraph (k)(1) of this section. The State agency shall maintain any documented corrective action on file for review by FNS.

(1) *Withholding payment.* At a minimum, the State agency shall withhold Program payments to a school food authority as follows:

(i) *Cause.* (i) The State agency shall withhold all Program payments to a school food authority if documented corrective action for critical area violation(s) which exceed the review threshold(s) is not provided within the deadlines specified in paragraph (k)(2) of this section; and/or

(ii) The State agency shall withhold all Program payments to a school food authority if, in the event that a follow-up review is not conducted, the State agency finds that corrective action for a critical area violation which exceeded the review threshold was not completed within the deadlines specified in paragraph (j) of this section or as otherwise extended by the State agency under paragraph (k)(1) of this section; and/or

(iii) The State agency shall withhold all Program payments to a school food authority if, on a follow-up review, the State agency finds a critical area violation which exceeded the review threshold on a previous review and continues to exceed the review threshold on a follow-up review.

(iv) The State agency may withhold payments at its discretion, if the State agency finds that documented corrective action is not provided within the deadlines specified in paragraph (k)(2) of this section, that corrective action is not complete or that corrective action was not taken as specified in the documented corrective action for a general area violation or for a critical area violation which did not exceed the review threshold.

§210.18

7 CFR Ch. II (1–14 Edition)

(2) *Duration.* In all cases, Program payments shall be withheld until such time as corrective action is completed, and documented corrective action is received and deemed acceptable by the State agency or as otherwise specified in paragraph (i)(5) of this section. Subsequent to the State agency's acceptance of the corrective actions (and a follow-up review, when required), payments will be released for all lunches served in accordance with the provisions of this part during the period the payments were withheld. In very serious cases, the State agency will evaluate whether the degree of non-compliance warrants termination in accordance with §210.25 of this part.

(3) *Exceptions.* The State agency may, at its discretion, reduce the amount required to be withheld from a school food authority pursuant to paragraph (1)(1)(i) through (iii) of this section by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. FNS may authorize a State agency to limit withholding of funds to an amount less than 40 percent of the total Program payments, if FNS determines such action to be in the best interest of the Program.

(4) *Failure to withhold payments.* FNS may suspend or withhold Program payments, in whole or in part, to those State agencies failing to withhold Program payments in accordance with paragraph (1)(1) of this section and may withhold administrative funds in accordance with §235.11(b) of this title. The withholding of Program payments will remain in effect until such time as the State agency documents compliance with paragraph (1)(1) of this section to FNS. Subsequent to the documentation of compliance, any withheld administrative funds will be released and payment will be released for any lunches served in accordance with the provisions of this part during the period the payments were withheld.

(m) *Fiscal action.* Fiscal action for violations identified during an administrative review or any follow-up reviews must be taken in accordance with the provisions in §210.19(c) of this part.

(1) *Performance Standard 1 violations.* A State agency is required to take fis-

cal action for all violations of Performance Standard 1. The State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors identified under paragraphs (g)(1)(i)(A) through (C) of this section, provided corrective action occurs.

(2) *Performance Standard 2 violations.* Except as noted under paragraph (m)(2)(iv) of this section, a State agency is required to take fiscal action for violations of Performance Standard 2 as follows:

(i) For food component violations cited under paragraph (g)(2) of this section, the State agency must take fiscal action and require the school food authority and/or school reviewed to take corrective action for the missing component. If a corrective action plan is in place, the State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors identified under paragraph (g)(2) of this section.

(ii) For repeated violations involving vegetable subgroups and milk type cited under paragraph (g)(2) of this section, the State agency must take fiscal action provided that:

(A) Technical assistance has been given by the State agency;

(B) Corrective action has been previously required and monitored by the State agency; and

(C) The school food authority remains in noncompliance with the meal requirements established in parts 210 and 220 of this chapter.

(iii) For violations involving food quantities and whole grain-rich foods cited under paragraph (g)(2) of this section and for violations of calorie, saturated fat, sodium, and *trans* fat requirements cited under paragraph (g)(2)(iv) of this section, the State agency has discretion to apply fiscal action provided that:

(A) Technical assistance has been given by the State agency;

(B) Corrective action has been previously required and monitored by the State agency; and

(C) The school food authority remains in noncompliance with the meal requirements established in parts 210 and 220 of this chapter.

Food and Nutrition Service, USDA

§210.18

(iv) *Performance-based cash assistance.* In addition to fiscal action described in paragraphs (m)(2)(i) through (iii) of this section, school food authorities may not earn performance-based cash assistance authorized under §210.4(b)(1) unless immediate corrective action occurs. School food authorities will not be eligible for the 6 cents per lunch reimbursement, as adjusted, with the beginning of the month following the administrative review and, at State discretion, for the month of review. Performance-based cash assistance may resume beginning in the first full month the school food authority demonstrates to the satisfaction of the State agency that corrective action has taken place.

(n) *Miscellaneous reporting requirement.* Each State agency shall report to FNS the results of reviews by March 1 of each school year, on a form designated by FNS. In such annual reports, the State agency shall include the results of all administrative reviews and follow-up reviews conducted in the preceding school year.

(o) *Summary of reporting requirements.* Each State agency shall report to FNS:

(1) The names of those large school food authorities exceeding any one of the critical area review thresholds as described in paragraph (d)(2) of this section.

(2) The results of reviews by March 1 of each school year on a form designated by FNS, as specified under paragraph (n) of this section.

(p) *Recordkeeping.* Each State agency shall keep records which document the details of all reviews and demonstrate the degree of compliance with the critical and general areas of review. Records shall be retained by the State agency as specified in §210.23(c) of this part. Such records shall include documentation of administrative reviews and follow-up reviews. As appropriate, the records shall include documented corrective action, and documentation of withholding of payments and fiscal action, including recoveries made. Additionally, the State agency must have on file:

(1) Criteria for selecting schools on first and follow-up reviews in accordance with paragraphs (e)(2)(ii) and (i)(2)(ii) of this section.

(2) Its system for selecting small school food authorities for follow-up reviews in accordance with paragraph (i)(1) of this section.

(3) Documentation demonstrating compliance with the statistical sampling requirements in accordance with paragraph (g)(1)(i)(A)(1) of this section, if applicable.

(q) *School food authority appeal of State agency findings.* Except for FNS-conducted reviews authorized under §210.29(d)(2), each State agency shall establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity conducted by the State agency under §210.18 of this part. State agencies may use their own appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the time, date, place and procedures of the hearing. If the State agency has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) The written request for a review shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding of payment, and the State agency shall acknowledge the receipt of the request for appeal within 10 calendar days;

(2) The appellant may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later

§210.19

7 CFR Ch. II (1–1–14 Edition)

than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(3) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(7) Within 60 calendar days of the State agency's receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process;

(9) The determination by the State review official is the final administra-

tive determination to be afforded to the appellant.

(r) *FNS review activity.* The term "State agency" and all the provisions specified in paragraphs (a)–(h) of this section refer to FNS when FNS conducts administrative reviews or follow-up reviews in accordance with §210.29(d)(2). FNS will notify the State agency of the review findings and the need for corrective action and fiscal action. The State agency shall pursue any needed follow-up activity.

[56 FR 32942, July 17, 1991; 56 FR 55527, Oct. 28, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §210.18, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§210.19 Additional responsibilities.

(a) *General Program management.* Each State agency shall provide an adequate number of consultative, technical and managerial personnel to administer programs and monitor performance in complying with all Program requirements.

(1) *Assurance of compliance for finances.* Each State agency shall ensure that school food authorities comply with the requirements to account for all revenues and expenditures of their nonprofit school food service. School food authorities shall meet the requirements for the allowability of nonprofit school food service expenditures in accordance with this part and, 7 CFR part 3015 and 7 CFR part 3016, or 7 CFR part 3019, as applicable. All costs resulting from contracts that do not meet the requirements of this part are unallowable nonprofit school food service account expenses. When the school food authority fails to incorporate State agency required changes to solicitation or contract documents, all costs resulting from the subsequent contract award are unallowable charges to the nonprofit school food service account. The State agency shall ensure compliance with the requirements to limit net cash resources and shall provide for approval of net cash resources in excess of three months' average expenditures. Each State agency shall monitor, through review or audit or by other means, the net cash resources of the